G. 7. The balance of the fine imposed by the Divisional Forest Officer upon contractors for the breach of his contracts is not recoverable as an arrear of land revenue. (G. R. No. 6934, dated 18th August 1894).

J. 1. **Boundary mark charge recoverable as arrears of land revenue.**—The effect of Section 187 of the Bombay Land Revenue Code (Act V. of 1879) is to make the provisions of Sections 153 and 56 and also those of Section 155, applicable to sales for the recovery of charges assessed under Section 122 in connection with boundary marks.

Such charges may be recovered either by forfeiture of the occupancy in respect of which the arrear is due, or by sale of the defaulter's immoveable property other than the land on which the arrear is due. In the former case the land is sold free from all incumbrances created by the occupant. In the latter case the rights of incumbrancers are not touched. (Venkatesh Ramkrishna *vs.* Mhal Pai Bin Naru Pai,—I. L. R. Bombay, Volume XV., page 67, 1891.)

CHAPTER XII.

Procedure of Revenue Officers.

188. In all official acts and proceedings a revenue officer shall, in the absence of any express provision of law to the contrary, be subject as to the place, time, and manner of performing his duties to the direction and control of the officer to whom he is subordinate,

Subordination of revenue officers.

Power to summon persons to give evidence and produce documents.

189. Every revenue officer not lower in rank than a Mámlatdár's first kárkun, or an Assistant Superintendent of Survey, in their respective departments, shall have power to summon any person whose attendance he considers necessary either to be examined as a party or to give evidence as a witness, or to produce documents for the purposes of any inquiry which such officer is legally empowered to make. A summons to produce documents may be for the production of certain specified documents, or for the production of all documents of a certain description in the possession of the person summoned.

All persons so summoned shall be bound to attend, either in person or by an authorized agent, as such officer may direct: provided that exemptions under [a] sections 132 and 133 of the V of 1908. Code of Civil Procedure, 1908, [a] shall be applicable to requisitions for attendance under this section;

and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements,

and to produce such documents and other things as may be required.

[a—a] These words were substituted for the original words "sections 640 and 641 of the code of Civil Procedure" by Bom. IV of 1913, s. 74.

N. 1. The exemptions under sections 132 and 133 of Act 5 of 1909 apply to (1) women who according to the customs and manners of the country, ought not to be compelled to appear in public, and to (2) persons whom the local Government, by notification

in the Official Gazette, exempt from personal appearance in Court.

N. 2. If a Mahalkari is on tour, his first karkun has no power to issue a summons under this section.

G. I. **Powers of District Inspectors** :—District Agricultural Inspectors can exercise all the powers under this section. (G. R. No. 1327, dated 25th February 1902).

J. I. **Mamlatdar cannot summon a person to appear before a Deputy Collector.**—Section 189 does not empower a Mamlatdar to summon any person to attend before a Deputy Collector, who was making certain inquiries about the appointment of a Patil for a certain Inam village. (Criminal Reports, 52—22nd August 1889—Imperial *vs.* Vidiadhar Gangadhar Lele).

190. Every summons shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the officer issuing it, and if he have a seal shall also bear his seal; Summons to be in writing, signed, and sealed.

and shall be served by tendering or delivering a copy of it to the person summoned, or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence. How to be served.

If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served in accordance with the preceding clause of this section. Service in district other than that of issuer.

G. I. Summonses or notices may be sent for service by a Mamlatdar to another Mamlatdar direct. (G. R. No. 5295 dated 1st June 1911.)

Mode of serving notices.

191. Every notice under this Act, unless it is otherwise expressly provided, shall be served either by tendering or delivering a copy thereof to the person on whom it is to be served or to his agent, if he have any;

or by affixing a copy thereof to some conspicuous place on the land, if any, to which such notice refers.

Notice not void for error.

No such notice shall be deemed void on account of any error in the name or designation of any person referred to therein, unless when such error has produced substantial injustice.

N. 1. Vide G. 1 under section 190.

Procedure for procuring attendance of witnesses.

V of 1908.

192. In any formal or summary inquiry if any party desires the attendance of witnesses, he shall follow the procedure prescribed by the [a] Code of Civil Procedure 1908, for parties applying for summonses for witnesses. [a]

[a—a] These words were substituted for the original words "Code of Civil Procedure, section 160" by Bom. IV of 1913, s. 7.

SUMMARY (s. 192)

1	Section 192 to be read with a Government order	N 1
2	Formal inquiry	G 1
3	Processes	N 2 G 3
4	Subsistence allowance and travelling expenses	G 4
5	Summary inquiry	G 1,2

N. 1. See G. R. No. 6737, dated 11th November 1881 printed under Section 125.

N. 2. Vide—Rule 2, Order XVI of 1st Schedule of Act V. of 1908, which is as follows :—

(1) The party applying for a summons shall, before the summons is granted, and within a period to be fixed, pay into the court such a sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the court in which he is required to attend and for one day's attendance. If the Court be subordinate to a High Court, regard shall be had in fixing the scale of such expenses to any rules made in that behalf.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

G. (*1*). **Formal summary and other enquiries under the Code.**—Revenue officers are generally empowered under Chapter XII. of the Code, Section 189, to summon any person whose attendance may be considered necessary in any enquiry which such officers are legally empowered to make.

2. Such enquiry must either be a formal enquiry or a summary enquiry or an enquiry which the Act does not require to be either formal or summary.

3. A formal or summary enquiry is, under Section 196, deemed to be a "judicial proceeding" and the officer holding it is deemed a Civil Court for the purposes of such enquiry. Section 192 provides that in any formal enquiry or summary enquiry if any party desires the attendance of witnesses he shall pay the necessary expenses of witnesses into Court.

4. As regards formal and summary enquiries, the officers holding them can be deemed to be Revenue Courts ‡ and the process fees* sanctioned

* For every notice or summons...3 annas.

For every warrant of arrest issued on application of parties...6 annas.

in the notification of Government at page 687 of the *Bombay Government Gazette*, Part I., of 8th July 1875 are applicable to such Courts.

‡ Any Revenue Authority in making such enquiries can be said to be holding as such a judicial proceeding. (G. R. J. D. 5855, dated 15th September, 1885.)

5. Other enquiries under the Code are not deemed to be "judicial proceedings" and the officers conducting them are not Revenue Courts. They are conducted according to general or special rules precribed by the Governor in Council, or in the manner provided in Section 197. In such enquiries no process fees are chargeable. (G. R. No. 3007, dated 27th May 1881.)

G. 2. **Officer holding summary enquiry to be deemed a Civil Court**—The officer or any authority holding a summary enquiry under the provisions of this Code is a Civil Court for the purposes of such enquiry, and such court may direct by whom the costs of each party are to be paid whether by himself or by any other party to the enquiry and whether in whole or in what part or proportions. Such costs can be levied under the provisions of Chapter XI of this Code. (G. R. No. 4468, dated 10th July 1882).

G. 3. **Serving of processes in formal and summary enquiries.**—The processes in summary and formal enquiries under the Land Revenue Code, 1879, should be served by means of persons temporarily employed and the charge incurred on account of such processes should be debited to "Land Revenue." (G. R. No. 7350, dated 21st October 1882.)

G. 4. **Rules regarding subsistence allowance and travelling expenses to be paid to witnesses.**—The following are the rules laid down by the High Court, under Section 160 (now rule 2 of Order XVI of first Schedule of Act V of 1908) of the Code of Civil Procedure, regarding the amount of subsis-

tence allowance and travelling expenses to be paid to witnesses summoned to attend in Courts subordinate to the High Court.

(*a*) European and East Indian witnesses are to be allowed their actual expenses for carriage when the same are not in excess of six annas a mile. They are also to be allowed a sum not exceeding Rs. 2-8 a day for subsistence allowance for the time of their attendance at and journey to and from the Court, if they demand the same.

(*b*) Native witnesses of the better class as Patels, Pandharpeshas, Merchants, Vakils and persons of corresponding rank, are to be allowed from 8 annas to 1 rupee a day, and artizans and persons of similar rank 6 annas a day, as subsistence allowance.

(*c*) Native witnesses of the class of cultivators and menials, who would not, under ordinary circumstances voluntarily incur any expense on account of special lodging when away from home, are to be allowed subsistence money at the rate of 4 annas per day.

(*d*) The persons mentioned in clauses (*b*) and (*c*) are also to receive railway and other travelling expenses actually incurred by them, provided the same be reasonable. When the journey to and from the Court is made by railway or other means of conveyance, the time for which subsistence allowance is paid, should be that actually spent on the journey. Where the journey is made on foot, 15 miles per day should be reckoned as a day's journey and subsistence allowance should be paid accordingly.

(*e*) Peculiar cases not provided for in the above rules are to be dealt with according to their own merits, and at discretion of the Court from which subsistence money or travelling allowance is demanded. (High Court's Civil Circular orders, pages 11 and 12 of the edition of 1903).

Mode of taking evidence in formal inquiries.

193. In all formal inquiries the evidence shall be taken down in full, in writing, in the language in ordinary use in the district, by, or in the presence and hearing and under the personal superintendence and direction of the officer making the investigation or inquiry, and shall be signed by him.

In cases in which the evidence is not taken down in full in writing by the officer making the inquiry, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by such officer with his own hand, and shall form part of the record.

If such officer is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

Taking evidence given in English. Translation to be on record.

When the evidence is given in English, such officer may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the district shall be made and shall form part of the record.

Writing and explanation of decisions.

194. Every decision, after a formal inquiry, shall be written by the officer passing the same in his own hand-writing, and shall contain a full statement of the grounds on which it is passed.

Summary inquiries how to be conducted.

195. In summary inquiries the presiding officer shall himself, as any such inquiry proceeds, record a minute of the proceedings in his own

hand in English or in the language of the district, embracing the material averments made by the parties interested, the material parts* of the evidence, the decision, and the reasons for the same :

Provided that it shall at any time be lawful for such officer to conduct an inquiry directed by this Act to be summary under all, or any, of the rules applicable to a formal inquiry, if he deem fit.

Formal and summary inquiries to be deemed judicial proceedings.

196. A formal or summary inquiry under this Act shall be deemed to be a "judicial proceeding" within the meaning of sections 193, 219 and 228 of the Indian Penal Code, and the office of any authority holding a formal or summary inquiry shall be deemed a Civil Court for the purposes of such inquiry. XLV of 1860

Hearing and decisions. Notice to parties.

Every hearing and decision, whether in a formal or summary inquiry, shall be in public, and the parties or their authorized agents shall have due notice to attend.

N. I.—Vide G. R. No. 4932, dated 8th August 1900, under section 86.

Ordinary inquiries how to be conducted.

197. An inquiry which this Act does not require to be either formal or summary, or which any revenue officer may on any occasion deem to be necessary to make, in the execution of his lawful duties, shall be conducted according to such rules applicable thereto, whether general or special, as may have been prescribed by the Governor in Council, or an authority superior to the officer conducting such inquiry, and, except

* In the authentic copy of the Code the word "parties" occurs here and is obviously a misprint for "parts."

in so far as controlled by such rules, according to the discretion of the officer in such way as may seem best calculated for the ascertainment of all essential facts and the furtherance of the public good.

N. 1. The Code requires that inquiries to be held under Section 118 (Rule 2), should be "formal," while those to be held under Sections 85, 87, 91, 93, 125, 129, 142, 186, and 202 to be "summary"; but under Section 195, clause 2, an inquiry, which the Code directs to be "summary" may, if the inquiring officer deems fit to do so, be conducted under all or any of the rules applicable to a "formal inquiry."

Copies and translations etc, how to be obtained.

198. In all cases in which a formal or summary inquiry is made, authenticated copies and translations of decisions, orders, and the reasons therefor, and of exhibits, shall be furnished to the parties, and original documents used as evidence shall be restored to the persons who produced them, or to persons claiming under them on due application being made for the same, subject to such charges for copying, etc., as may, from time to time, be authorized by Government.

G. 1. **Application for return of documents filed, exempt from court fees.**—In supersession of notification No. 4347, dated the 26th November 1886, and in exercise of the powers conferred by Section 35 of the Court Fees Act, 1870, the Governor General in Council is pleased to remit the fee payable under the said Act on an application presented by any person for the return of a document filed by him in any Court or public office. (G. of I. N. No. 2111, dated 22nd April 1887, published in the B. G. G. Part, I, page 368, 1887).

G. 2. **Return of documents produced:**—In all cases under the Land Revenue Code, the subject matter of which concerns private individuals only,

the documents produced in evidence, whether they are in original or are certified copies, shall be returned to the person entitled to receive them back. It is unnecessary to retain copies of such documents except when the application for the return of the documents is made before the time for appeal has expired or before the disposal of the appeal already preferred, in which case certified copies of such documents should be kept at the expense of the applicants. (G. R. No. 4492, dated 9th July 1898.)

G. 3. Return of documents in a case before a Collector decided several years ago was refused on the ground that the case related to a cash allowance and was not governed by the orders of 1898. Such an unduly restrictive intention was not meant and the orders of 1898 should be generally followed in all cases coming before Revenue Officers which are not governed by any other special* ruling. (G. R. No. 2071, dated 26th February 1908).

* G. R. J. D. No. 3394, dated 31st May 1881, and G. R. R. D. No. 148, dated 11th January 1886.

G. 4. Copying fees, scale of—in respect of the village forms of which the village accountants have been authorised to give copies.

Statement showing the proposed rates of copying fees.

No. of village form.	Description of form.	Rate of copying fee.
I	Land and assessment Register.	One anna per entry of a survey number or pot-number.
III	Register of alienated Land.	One anna per entry.
VIIIA.	Khatas of holding.	One anna per Khata having 5 survey numbers or less and one and half anna for khata of more than 5 survey numbers.
VIIIB.	Annual Khatas of dues and recoveries.	One anna for each khata.
IX.	Day and Receipt book.	One anna for each entry in the day book.
XI.	Trial balance sheet.	One anna per entry.
XII.	Register of crops and Tenancies.	Do.
XIII.	Birth and death register.	One anna per entry.
XIV.	Cattle census.	One anna per entry.

Order—The proposed levy by village accountants of copying fees at a uniform rate of one anna per entry or khata in respect of the village forms mentioned in the above statement is sanctioned. (G. R. 10809 dated 6th September 1917.)

Arrest of a defaulter to be made upon a warrant

199. Whenever it is provided by this Act that a defaulter, or any other person may be arrested, such arrest shall be made upon a warrant issued by any officer competent to direct such person's arrest.

Power of revenue officer to enter upon any lands or premises for purposes of measurement, etc.

200. It shall be lawful for any revenue officer at any time, and from time to time, to enter, when necessary, for the purposes of measurement, fixing, or inspecting boundaries, classification of soil, or assessment, or for any other purpose connected with the lawful exercise, of his office under the provisions of this Act, or of any other law for the time being in force relating to land revenue, any lands or premises whether belonging to Government or to private individuals, and whether fully assessed to the land revenue or partially or wholly exempt from the same: Provided always that no building used as a human dwelling shall be entered, unless with the consent of the occupier thereof, without a notice having been served at the said building not less than seven days before such entry; and provided also that, in the cases of buildings of all descriptions, due regard shall be paid to the social and religious prejudices of the occupiers.

Proviso.

Governor in Council to determine the language of a district.

201. The Governor in Council may declare what shall, for the purposes of this Act, be deemed to be the language in ordinary use in any district.

202. Whenever it is provided by this, or by any other Act for the time being in force, that the Collector may or shall evict any person wrongfully in possession of land, such eviction shall be made in the following manner, *viz* :— Collector how to proceed in order to evict any person wrongfully in possession of land.

by serving a notice on the person or persons in possession requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and,

if such notice is not obeyed by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and,

if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mámlatdár or Mahálkari, or send him with a warrant, in the form of Schedule I, for imprisonment in the civil jail of the district for such period not exceeding thirty days, as may be necessary to prevent the continuance of such obstruction or resistance.

G. 1. **Appropriation leads to eviction.**—The appropriation of land for unlawful purposes as stated in Sections 48 and 66 is a breach of the conditions of occupancy. The land is held on certain conditions, the effect of which is to defeat the estate in case of a breach of any one of them being committed. In both Sections the law gives the Government as landlord the power of re-entry on breach of the particular condition contemplated in those two Sections. So also on failure of payment of rent the Government has the power of re-entry. Forfeiture follows breach of any of the conditions, which forfeiture Government can waive or enforce as it chooses.

The principle has been recognized by the Legislature in the above two Sections and the holder of such land may be treated as wrongfully in possession and be summarily evicted in the manner provided in Section 202. (G. R. No. 5211, dated 9th September 1881.)

G. 2. Mamlatdars and Mahalkaris should sign notices of eviction when Prant officers have ordered eviction. (G. R. No. 5295, dated 1st June 1911 tem 85.)

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CHAPTER XIII.

Appeals and Revision.

Appeal to lie from any order passed by a revenue officer to his superior.

203. In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue officer under this Act, or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may